UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 778

Case No. 841: CHU

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding; Mr. Francis Spain; Ms. Deborah Taylor Ashford;

Whereas, at the request of Mondfeld S. Chu, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of an application to the Tribunal to 28 February 1995;

Whereas, on 25 February 1995, the Applicant filed an application requesting the Tribunal, inter alia:

> "... to ... reverse the Pension Board's erroneous judgement [not to place the Applicant on the United Nations Joint Staff Pension Fund (UNJSPF) two-track pension adjustment system].
>
> [To find that the Applicant is] rightfully entitled to the exchange rate which existed at the time of my retirement from the United Nations (approximately 1 US$ to 4 NT$ [New Taiwan Dollars]), and to have this rate protected from subsequent erosion via the safeguards of the UNJSPF two-track system of pension adjustment. Hereafter, my pension payments should reflect the real value of the US dollar amount vis-à-vis the NT dollar that existed at the time of my retirement. The amount of compensation should be determined by calculating the difference in pension benefits that I would have received had the proper exchange rate been established at the time of my retirement. Later fluctuations should be adjusted accordingly by referring to the local currency track that needs to be established for UNJSPF beneficiaries who

reside in Taiwan. I only seek retroactive payment dating back to November 12, 1992, which was the date of my initial request for relief."

Whereas the Respondent filed his answer on 18 August 1995;

Whereas, on 11 July 1996, the Tribunal requested the Respondent to provide answers to certain questions, which the Respondent provided on 19 July 1996;

Whereas, on 22 July 1996, the Respondent provided a revised set of answers to the Tribunal's questions of 11 July 1996;

Whereas, on 6 August 1996, the Tribunal notified both the Applicant and the Respondent that it had adjourned consideration of the case until its next session, commencing on 22 October 1996;

Whereas, on 12 September 1996, the Respondent filed a further submission with the Tribunal;

Whereas, on 12 October 1996, the Applicant filed a response to the Respondent's written statement of 12 September;

Whereas the facts in the case are as follows:

The Applicant served the United Nations as an Interpreter in the Department of Conference Services from 1969 to 1981. He retired from service on 3 January 1981. His pension benefit commenced on 4 January 1981. Upon retirement, he moved from New York to Taiwan.

On 12 November 1992, the Applicant wrote to the United Nations Joint Staff Pension Fund (UNJSPF), noting that, as a result of the declining value of the US dollar in relation to the New Taiwan dollar, "I have in effect taken a 37.5% cut in my pension". He requested that "an adjustment be made in my monthly pension payments to compensate for the depreciated US dollar". On 7 April 1993, he wrote to the UNJSPF again, requesting "prompt attention into this matter".

In a reply dated 3 June 1993, the Secretary of the UNJSPF noted: "[Y]our pension benefit has been established solely in US dollars and is adjusted on an annual basis on 1 April, in accordance

with the movement of the consumer price index of the United States ..." He advised the Applicant that "[u]nfortunately, adjustments in the pension benefit, due to exchange rate fluctuations, cannot be made for pensioners who claim the United States as their country of residence but who actually live elsewhere, in your case Taiwan."

In August 1993, the Applicant replied to the Secretary of the UNJSPF, "I would like to make it unequivocally clear that I have never in the past nor in the present, made any such claim that the United States was my country of residence". He noted that during his employment, he had returned to Taiwan for home leave, that upon retirement he had received a repatriation grant and that he had promptly informed the Pension Board of his residential address in Taiwan. He enclosed further documentation of his residence in Taiwan.

In a reply dated 30 September 1993, the Secretary of the UNJSPF noted that the Applicant's benefit had been established in US dollars upon his separation, and that "[i]n view of the fact that you had not provided proof of residence in Taiwan, a local currency track for that country was not established". He stated that, within six weeks, he would provide the Applicant with "estimated amounts of your benefit under the two-track feature of the revised Pension Adjustment System".

On 13 January 1994, the Secretary of the UNJSPF advised the Applicant that his letter of 30 September 1993 had been "a standard reply" which "failed to take into account the particular circumstances of your place of residence with respect to which: (a) no UN operational exchange rate exists between the US dollar and the local currency; (b) there is no relevant UN post adjustment classification that could be used to calculate a cost of living differential factor for determining the local currency base amount of your benefit; and (c) no consumer price index is published in the 'UN Monthly Bulletin of Statistics' or specified by the United Nations Statistical Division." For these reasons, he stated

"a local-currency track could not be established for your place of residence under the UNJSPF Pension Adjustment System".

On 9 June 1994, the Applicant appealed this decision in a letter to the Deputy Secretary, UNJSPF, contending that the "data and statistics which are required to establish a local currency track are readily available," and their absence from UN publications "should not be allowed to stand as the justification for depriving me of the right to have a two-track pension adjustment, which is provided for other retirees."

On 16 August 1994, the Secretary of the United Joint Staff Pension Board (UNJSPB) informed the Applicant that his appeal had been considered by the Standing Committee of the UNJSPB on 28 July 1994 and that the decision of the Secretary had been upheld. He stated: "By its resolution 2758 of 25 October 1971, the UN General Assembly had recognized the People's Republic of China as the sole lawful representative of China in the United Nations; consequently, and as affirmed by the UN Legal Counsel, Taiwan is considered to be part of the territory of China, constituting one of the provinces of the People's Republic of China. Accordingly, under the UNJSPF pension adjustment system, your UNJSPF retirement benefit (R/21787) will continue to be established and adjusted solely on the basis of the US dollar track".

On 25 February 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The purpose of the UNJSPF Pension Adjustment System is to protect the pension benefits of UN retirees from erosion. There is no requirement that the country of residence be a Member State of the UN.

2. The Applicant should not be denied the same rights to pension adjustment that other retirees are able to enjoy. A retiree should not be penalized for his or her choice of residence.

Whereas the Respondent's principal contentions are:

1. Under the terms of resolution 2758/XXVI of 25 October 1971, the Applicant's country of residence cannot be treated in the way he would wish. The remedy he seeks would require a decision by the General Assembly.

2. The Applicant, having served as a UN staff member for many years, was, or should have been, aware of the status of the area in which he chose to retire.

The Tribunal, having deliberated from 29 October to 21 November 1996, now pronounces the following judgement:

I. The Applicant was employed as a Translator in the Organization from 1969 to 1981. He has resided in Taiwan since his retirement and receives a pension calculated in US dollars. The Applicant asserts that, due to the currency fluctuations between the US dollar and the New Taiwan dollar, the purchasing power of his pension has diminished, causing substantial loss in its value. The Applicant requests that the UN Joint Staff Pension Fund (UNJSPF) establish a local track for Taiwan, based on Taiwan currency, within its two-track pension adjustment system. The "local currency track" aims to protect pension beneficiaries residing outside the United States against fluctuations in the US dollar vis-à-vis their local currency. The Applicant's request for the establishment of a local currency track for Taiwan was rejected by the Standing Committee of the UNJSPB at its meeting on 28 July 1994.

II. The Respondent contends that a two-track pension adjustment system based on Taiwan currency cannot be established as Taiwan is considered by the UN to be part of the People's Republic of China.

III. The facts in this case are not in dispute. The Tribunal notes that the "local currency track" takes account only of those countries that are recognized by the United Nations. To grant the Applicant's request would mean establishing a specific pension regime for Taiwan, as though the latter were a State recognized by the United Nations. To do so, however, would contravene General Assembly resolution 2758/XXVI, which states that the United Nations considers Taiwan to be part of China, whose only representative is the People's Republic of China.

General Assembly resolution 2578/XXVI governs the Respondent's application of the Pension Fund Regulations since, as a subsidiary organ of the General Assembly, the UNJSPF is bound to follow the determinations made by the General Assembly in such matters.

IV. The Tribunal notes, in addition, that the calculation of a hypothetical rate of exchange between the US dollar and the New Taiwan dollar would confront the UNJSPF with an array of problems since it has no practical means of measuring consumer price index factors for Taiwan based on its currency, as it has no figures available for Taiwan (e.g., UN Operational Rate of Exchange, Consumer Price Index or Post Adjustment Relativities). Moreover, the Tribunal wishes to point out that the creation of a local currency track for Taiwan and the application of the hypothetical conversion rate for such track to the Applicant's pension would not necessarily inure to the Applicant's advantage in the future -- for example, if the value of the US dollar were to rise against the value of the New Taiwan dollar.

V. While the Tribunal is sympathetic to the difficulties facing the Applicant, it can find no basis on which to grant him relief.

VI. For the foregoing reasons, the application is rejected.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Francis SPAIN
Member

Deborah Taylor ASHFORD
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary